

Judicial Branch News

January/February 2007



Court Adopts Access Rules

Submitted by Judy Meadows, State Law Librarian

After a lengthy process, the Montana Supreme Court recently adopted Rules on Privacy and Public Access to Court Records. The rules have a delayed effective date of December 31, 2007 to allow time for public education about the rules. The rules are available at: [Rules on Privacy and Public Access to Court Records](#)

The Supreme Court's Commission on Technology initiated the project to create a comprehensive set of rules governing access to state records. The rules are necessary given the increasing availability of court data to be made available electronically. A taskforce led by the State Law Librarian and the Branch IT director and including clerks of court from courts of limited jurisdiction, district courts, and the Supreme Court.; the executive director of the State Bar, a district court judge, a justice of the peace, a victim's advocate, and a media representative developed the draft set of rules.

The taskforce was charged with developing rules within the context of the Public's Right to Know, guaranteed by Article II, Section 9, and the Right of Individual Privacy, guaranteed by Article II, Section 10, of Montana's Constitution. Model guidelines promulgated by

the National Center for State Courts were used as a starting point but were adjusted to accommodate Montana's very strong constitutional guarantees.

The seven major topics covered in the rules are:

1. Purpose of the rules;
2. Access by whom;
3. Access to what;
4. When records would be available;
5. Fees;
6. Obligations of vendors; and
7. Obligations of the court to inform and educate.

Major points that court employees should be familiar with include:

1. The responsibility for protecting privacy rights and sensitive information rests with the filing party.
2. There will be no virtual obscurity - what is available at the courthouse will also be available on the Internet when court technology reaches that point.

3. Information in court records is generally presumed to be accessible.
4. Priorities have been set for electronic access as case management systems are rolled out:
 - a. Litigant/party indexes to cases; listings of new case filings; registers of action; calendars or dockets; and judgments, orders, decrees and liens affecting title to real property.
5. We have stipulated how one can request to prohibit public access; also how one can obtain access to restricted information.

IN ALL INSTANCES THE FOLLOWING INFORMATION CANNOT BE INCLUDED IN ANY DOCUMENT FILED IN ANY MONTANA COURT:

1. Complete Social Security numbers;
2. Complete financial account numbers;
3. Full names of minor children;
4. Full birth dates; and
5. Anything already protected by state or federal law.

The taskforce spent considerable time gathering references to all Montana and federal laws that protect privacy rights. These are included in the rules with commentary, on

the website (see above link). In adopting the rules, the Supreme Court recognized that certain rules or parts may become applicable only when the technology contemplated by the rule becomes available to the courts.

We will spend much time and energy over the next 10 months in working with the courts at all levels on new forms and processes that will accommodate the new privacy requirements. We also plan to work with other public entities, such as the Department of Public Health and Human Services and the Department of Justice, who file many documents with courts that contain private information. We will determine, for instance, if the information really has to be on a form or could it be moved to another document that is not filed with court. We will prepare a form that parties can file with court papers that will stipulate that certain pages should be protected under the rules' privacy provisions.

Volunteers who are willing to help identify forms or processes that need to be modified or who want to assist in any other matter related to the rules should contact Judy Meadows at 1.800.710.9827 or email to jmeadows@mt.gov. Questions can also be directed to Judy.

Legislative Session Twists and Turns

Budget Changes Challenge the Branch

February 28 marks the midpoint for the 2006 legislative session – 45 days down and 45 days to go. To date, over 1,400 bills have been introduced.

In late January, we presented our proposed budget to the Joint Appropriations Subcommittee on General Government and Transportation. The Subcommittee approved most of our proposals, including funding for District Court

safety and security, judicial support and youth probation staff, internal pay equity adjustments, Court-Appointed Special Advocate (CASA) stabilization, a pro se law clerk, IT software maintenance, and judicial education.

Traditionally, programs approved in the subcommittees are incorporated into House Bill No. 2 (HB 2), which provides funding for all state agencies for the next 2 fiscal years. HB 2, however, was tabled by the House Appropriations Committee. The state budget was then broken into six smaller appropriations bills. The Judicial Branch budget is now contained in HB 804, together with the budgets of the Legislative Branch and several Executive Branch agencies. In addition to our base budget, HB 804 contains funding for the following major Judicial Branch proposals:

- Court-Appointed Special Advocates (CASA) funding stabilization (\$371,200 for biennium) – Provides money to stabilize funding for local CASA programs by funding a portion of the local program directors' salaries. Also provides money for establishing new local programs and meeting unanticipated expenses incurred by existing programs.
- Pay equity adjustments (\$760,000 for biennium) – Provides funding to address pay disparities within the Judicial Branch.

- IT software maintenance (\$521,446 for biennium) – Provides funding for maintenance for the case management systems used in the Courts of Limited Jurisdiction and District Courts (FullCourt) and for the case management system used by the Supreme Court (C-Track).

The bill also proposes to reduce Judicial Branch personal services funding by \$1 million dollars. This action was not discussed or taken up by the subcommittee during the HB2 action and would have a significant on the Branch's base budget.

The House Appropriations Committee will hear HB 804 during the week of March 5. At the hearing, we will seek the Committee's support for those proposals that are not funded in the bill.

Another important budget bill, House Bill No. 14 (HB 14), contains the Judicial Branch's major information technology (IT) proposals as well as IT proposals for certain Executive Branch agencies. Our \$3.9 million IT package requests funding for a statewide software license for a case management, jury, and imaging system (FullCourt) to complete installation in the District Courts, a software package for judicial calendaring, development of a electronic case filing system and a court document management system, and courtroom technology improvements (including interactive video, recording and reporting

equipment, and sound systems). We presented our proposal to the Joint Appropriations Subcommittee on Long-Range Planning in early February. The Subcommittee approved HB 14 without amendment. The bill now advances to the House Appropriations Committee for a hearing and executive action.

A third budget bill that we are supporting is House Bill No. 3 (HB 3), which provides additional funding (i.e., supplemental appropriations) for state government entities for this fiscal year. The Judicial Branch is seeking a \$2.5 million general fund supplemental appropriation for fiscal year 2007 to replace funds that were moved from fiscal year 2007 to fiscal year 2006 to cover District Court variable costs, primarily indigent defense expenses. HB 3 is scheduled for a hearing in the House Appropriations Committee on February 28.

In addition to these budget bills, we continue to support the following general legislation:

- House Bill No. 18 (HB 18). This bill repeals a statute requiring a judge from a multi-county judicial district who travels to a county in his or her district other than the county in which the judge resides to file travel expense vouchers on the first of the month or within 3 days thereafter. Repeal of this statute would allow these judges to submit their vouchers within 3 months

after incurring the expenses. HB 18 has passed the House and been transmitted to the Senate.

- Senate Bill No. 146 (SB 146). The Supreme Court has joined the Department of Corrections in HB 146 to revise the Juvenile Delinquency Intervention Act. Under this proposal, the responsibility for administering unexpended JDIP funds (a.k.a. PIF money) shifts from the Department of Corrections and the Cost Containment Review Panel to the Judicial Branch. SB 146 has passed the Senate and been transmitted to the House.
- Senate Bill No. 124 (SB 124). The Office of Court Administrator and Office of State Public Defender have assisted the Department of Public Health and Human Services (DPHHS) in drafting legislation to eliminate the offices' obligation to pay the DPHHS for costs of psychological examinations and associated expenses and unfit to proceed commitments at DPHHS facilities. SB 124 has passed the Senate and been transmitted to the House.

Finally, House Bill No. 13 (HB 13), the bill providing salary and benefit adjustments for state employees, has passed the House and been transmitted to the Senate. HB 13 contains money for the following:

- a 3% across-the-board pay increase in each year of biennium (i.e., fiscal year 2008 and fiscal year 2009);
- an additional 0.5% longevity increase for Judicial Branch employees with 10-year longevity increments; and
- a 6% increase in the state's share of employee health insurance.

The bill also provides a smaller amount of money to the Branch to be used for equalizing pay and making market adjustments for certain positions. Please note that we will not be developing recommendations for the Supreme Court's review and

approval regarding allocation of this money until the end of the legislative session when the final amounts are guaranteed.

If you'd like more information about the Branch's budget or legislation, please contact Lois Menzies at (406) 841-2957 or lmenzies@mt.gov.

REMINDER

If you have a change in your marital status, please don't forget to update your PERS beneficiaries, your emergency contact, life insurance beneficiaries and decedent's warrant form. The forms are available by calling (406) 841-2950.

Chief Justice Delivers State of Judiciary

Chief Justice Karla Gray presented the State of the Judiciary to a joint legislative session on January 18. The address highlighted many of the successes of the branch during the

interim. Chief Justice Gray also emphasized the need for additional resources for courts. The full address is available at: [2007 State of the Judiciary](#)

Extensions for 2006 annual leave are due by March 31. If you are unable to use all your excess 2006 annual leave please get the signed extension from your supervisor submitted to Shelly Grandy.

Welcome to the following new employees:

Seth Palmer
Supreme Court Law Clerk

Doug Schultz
Supreme Court Law Clerk

Denise Hartman
1st District JA

Alta Solan
3rd District JA

Anne Bonner
8th District Law Clerk

Deborah Pratt
9th District Law Clerk

Ed Coffman
11th District Law Clerk

A Glimpse at 2006 Supreme Court Caseload

Submitted by Ed Smith, Clerk of the Supreme Court

In the calendar year 2006, the Office of the Clerk of the Supreme Court filed 760 new cases at the Montana Supreme Court. This number is comprised of original proceedings (i.e. applications for writs), attorney discipline matters, and all direct appeals in which this office took receipt of the district court record.

The 760 number represents an increase of 22 cases over 2005's total of 738 cases. In the same time frame the Supreme Court disposed of a total of 736 cases through written opinions, dismissals, and orders granting or denying relief.

Direct Appeals on the Rise

Compared with the 2005 totals, last year's caseload composition revealed a 33% reduction in the number of original proceedings, through which petitioners ask for various relief in the form of applications for writs (e.g. supervisory control, habeas corpus, mandamus, etc.)

In contrast, the number of direct appeals increased over 16% from 525 to 611. For my office and the Court, the increase in appeals is significant in that a direct appeal requires far more time and resources than an original proceeding as it makes its way through the appellate process. In other words, the net increase of 22 cases from 2005 to 2006 translates into a more significant increase in the overall workload than the number would initially suggest.

Pro Se Litigants Filing More Appeals

Another noteworthy statistic from 2006 is the increase in the number of direct appeals in which one or more party appears pro se (i.e. representing themselves without counsel). In both 2005 and 2006, over one third (33%) of the cases before the Supreme Court involved pro se litigants. But in 2006, the number of pro se litigants' filings direct appeals increased 26%, from 115 to 145 cases.

As mentioned earlier, the fact that direct appeals require more resources is magnified in these instances where the pro se litigant is unfamiliar with procedure and the appellate process in general. For this reason, I supported the Court's legislative proposal to add a pro se law clerk position to the Court staff in an effort address the needs of this growing caseload trend.

Mediation Cases

A look at the 2006 Rule 54 Mandatory Appellate Mediation statistics reveal that approximately 27% of all appeals filed in 2006 were subject to the mandatory appellate mediation process. Of that number slightly more than 16% were successfully mediated or settled before the appeal was completed.

This success rate is roughly on par with what occurred in 2005 when 15.73% of the appeals subject to

Rule 54 mediation were successfully settled.

Invitation

This article is meant to offer a brief glimpse at the Supreme Court's 2006 caseload statistics and to note

a few points of interest. I invite you to check out our statistical reports in detail on the Judicial Branch website at www.courts.mt.gov. I further invite you to give us a call should you have any questions regarding these reports and I will happy to discuss them with you.

Save the Date...

The Montana Supreme Court in conjunction with the Montana Public Defender Office, the Attorney General and the Montana Department of Public Health and Human Services will sponsor the second annual children's summit on **August 22-23** in Helena. The conference will build on the local plans made last year in the first summit.

Another conference focused on juvenile family and dating violence is scheduled for **June 19-20** in Helena. Information about both conferences is available from Karen Sedlock at ksedlock@mt.gov or 841-2967.



The Judicial Branch newsletter is distributed six times a year through e-mail. Printed copies are not produced. For more information or comments please contact Beth McLaughlin at 406-841-2966 or bmclaughlin@mt.gov